IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1576 OF 1992.

Mrs.Vani M.Uchilkar,
of Bombay, Indian Inhabitant,
residing at A-3, Gala Nagar
Cooperative Housing Society Ltd.,
Nahur Road, Mulund (West),
Mumbai 400 080. ... Petitioner

Versus.

1. V.P.M.Kannada High School,
through its Headmistress,
Mithanagar Road, Mulund (W),
Mumbai 400 081.

2. Vidya Prasarak Mandal,
through its Secretary
having their office at
V.P.M.Kannada High School,
Mithanagar Road, Mulund (W),
Mumbai 400 081.

3. Education Inspector,
Greater Bombay (North Zone),
Churchgate, Bombay 400 020.

4. State of Maharashtra,
through its department of
Education and Employment,
Mantralaya Annexe,
Bombay 400 032. ... Respondents.

Shri Mihir Desai for the Petitioner.

Shri R.B.Jaiswal for the Respondent No.1 and 2.

Smt.S.M.Dandekar, A.G.P. for Respondents Nos.3 and 4.

CORAM : SMT.RANJANA DESAI &
ABHAY S. OKA, JJ.

Hearing Concluded on : 5th December, 2005.

Judgment delivered on : 14th December, 2005.

JUDGMENT. (per Abhay S.Oka, J.):

1. By this petition under Article 226 of the Constitution of India, the Petitioner has taken exception to the order dated 8th February 1990 passed by the 3rd Respondent-Education Inspector Greater Bombay (North Zone), Bombay, by which the 3rd Respondent fixed the Petitioner's pay in the graduate scale with effect from 12th June 1986. The prayer in this petition is for a Writ of Mandamus directing the Respondents to fix the pay of the Petitioner in graduate scale with effect from 12th June 1979 and to pay her all consequential benefits. A prayer was also incorporated claiming seniority and promotion to the post of Headmistress. However, the petitioner has unconditionally given up the said claim for seniority and for promotion to the post of Headmistress. By amending the petition, the Petitioner has also impugned order dated 3rd October 1992 passed by the Director of Education, Pune.

2. With a view to appreciate the submissions made by the Counsel appearing for the parties, it will be necessary to refer to the facts of the case. The Petitioner was appointed as an Assistant Teacher with the Respondent No.1-School with effect from 12th June 1977. The Petitioner was appointed to teach standards 5th to 7th. At that time, the Petitioner was holding qualifications of SSC and TCH of Mysore University.

Subsequently TCH of Mysore University was recognised as equivalent to STC from Maharashtra. In the year 1979, the Petitioner secured B.A. degree from Karnataka University by correspondence course. The Petitioner acquired M.A. Degree from the University of Mumbai in the year 1981. The Petitioner acquired B.Ed. Degree from Mysore University by correspondence course. The contention of the Petitioner is that as TCH of Mysore University was recognised as equivalent to STC, she should be given pay scale applicable to the Assistant Teacher having qualification of B.A. and STC. The Petitioner is seeking the said pay scale from the year 1979. The second contention of the Petitioner is that from the year 1983 when she passed B.Ed. examination, the Petitioner should be placed in the pay scale applicable to the Assistant Teacher holding qualification of B.A., B.Ed. It is not in dispute that on 15th July 1986 the Management of the School submitted a proposal for giving pay scale of the graduate trained teacher to the Petitioner from the year 1986. By a subsequent resolution dated 20th September 1986, the management resolved that the Petitioner may be given the said pay scale from the year 1983. The Education Department sanctioned the pay scale of graduate trained teacher to the Petitioner with effect from 1986. At the stage of admission, by order dated 13th August 1992, a Division Bench of this Court (Coram: P.D.Desai, C.J. and S.H.Kapadia, JJ) directed the Director of Education

to treat this writ petition along with the affidavit-in-reply and affidavit-in-rejoinder as a representation made to him and to pass a reasoned order thereon after offering to the writ Petitioner and the School management an opportunity of being heard. Accordingly the Director of Education passed an order on 30th October 1992 holding that the Petitioner is not entitled to trained graduate scale with effect from 1979. By amending the petition, the said order dated 3rd October 1992 has been impugned by the Petitioner.

3. The Hon.Secretary of the Respondent No.2-Management filed an affidavit-in-reply in which it is stated that the management recommended the trained graduate pay scale from the year 1983 to the Petitioner. However, the said pay scale was granted to the Petitioner by the Education Department with effect from 12th June 1986. It is stated that in view of the decision of the Government of granting graduate pay scale to the Petitioner from 1986, the Petitioner cannot claim the said pay scale for earlier period. It is contended that the Petitioner had not taken prior written permission from the Respondents Nos.1 and 2 for appearing for the B.Ed. examination and therefore, the Petitioner did not become entitled to the graduate pay scale automatically. Reliance is placed on the relevant Rules in the Secondary School Code. An affidavit-in-rejoinder has been filed by the Petitioner

in which it is asserted that the Petitioner had taken permission from the Respondents Nos.1 and 2 for appearing for the examination and in fact examination leave was granted to the Petitioner.

4. An additional affidavit has been filed by the Respondent No.2 in which it is stated that as a special case, the qualification of TCH of the Petitioner was treated as equivalent to STC in Maharashtra and from 13th October 1980 the Petitioner was granted pay scale of under graduate trained teacher. It is not disputed in the said affidavit that leave application of the Petitioner for attending the B.Ed.examination was granted. However, it is contended that the grant of leave will not amount to granting permission to appear for examination in terms of Rule 72 of the Secondary School Code. There is one more affidavit filed by the Respondent No.2 in the year 2004 placing reliance on the order dated 3rd October 1992 passed by the Director of Education.

5. The Education Inspector, North Greater Bombay, has also filed an affidavit-in-reply. It is admitted in the said affidavit that a second resolution was passed by the Management providing for giving trained graduate scale to the Petitioner from 12th June 1983.

6. The learned Counsel for the Petitioner submitted

that the order dated 3rd October 1992 shows that the Education Department accepted B.Ed.Degree from Mysore University as equivalent to B.Ed. Degree in Maharashtra and granted approval for placing the Petitioner in the pay scale of graduate trained teacher from the year 1986. He submitted that the Petitioner is entitled to the pay scale applicable to the teacher having B.A. and STC qualification from the year 1979. He submitted that in any event the Petitioner must get pay scale applicable to the graduate trained teacher from the year 1983. The learned Counsel appearing for the Respondents Nos.1 and 2 submitted that the Petitioner cannot be granted pay scale of graduate trained teacher from the year 1983. He submitted that if this Court is inclined to grant the said pay scale from 1983, the necessary monetary benefits will have to be paid to the Petitioner by the State as the Respondent No.1-School is a fully aided school. The learned A.P.P. supported the order dated 3rd October 1992 passed by the Director of Education and submitted that no interference was required with the reasoned order passed by the Director of Education.

7. We have considered the submissions. While passing order dated 3rd October 1992, the Director of Education has held as under:

"The management sent proposal to Education Dept. Bombay on 15th July, 1986 stating that pay scale for the graduate trained teacher may be given to Uchilkar with effect from 1986. Later on a second resolution dated 29.9.1986 was made and submitted to the Education Dept., that the effect may be given from 1983. Education Dept.has sanctioned trained graduate teachers scale to Smt.Uchilkar from June 1986. For claiming the sale of a trained graduate it is necessary that the management should have made specific order in 1983."

In further part of the order he has observed that B.Ed. course completed by the Petitioner from Mysore University is a correspondence course which is not equivalent to B.Ed. course in Maharashtra. Nevertheless the Education Department has sanctioned pay scale of trained graduate teacher to the Petitioner from June 1986. Thus trained graduate scale is not denied to the Petitioner on the ground that the B.Ed. degree obtained by her is not equivalent to the B.Ed. degree in Maharashtra. The only reason for not granting the approval to the Petitioner from the date of obtaining B.Ed. degree is that the management did not pass specific order in the year 1983 granting graduate pay scale to the Petitioner. Thus the benefit of graduate pay scale to the Petitioner from the year 1983 cannot be

denied on the ground that B.Ed. degree obtained by the Petitioner is not equivalent to the B.Ed. degree in Maharashtra. The Schedule "B" of the Rules framed under the Maharasthra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 incorporates qualification for graduate teacher. The Schedule provides for qualification of a Bachelor's Degree in Teaching or Education of any statutory University. The said Rules came into force on 16th July 1981. It is not in dispute that Mysore University is a statutory University. Thus the Petitioner acquired recognised qualification for the post of graduate teacher from October 1983 when she passed B.Ed. Examination.

8. The next question which arises is whether the Petitioner can be denied pay scale of graduate trained teacher from the year 1983. It is not in dispute that the Petitioner obtained Bachelor of Education degree in October 1983. One of the contentions raised in the affidavit-in-reply is that the Petitioner cannot get the pay scale of graduate trained teacher automatically as the Petitioner appeared for the B.Ed. examination without seeking prior permission of the management. In the affidavit-in-rejoinder, the Petitioner has specifically stated that she had taken permission of the management and in fact leave was specifically granted to the Petitioner for appearing for the said examination. In the further affidavit filed by the Secretary of the

Respondent No.2, it is not disputed that the leave was granted in favour of the Petitioner for appearing for the B.Ed. examination. However, it is vaguely contended that grant for leave for attending examination does not ipso facto amount to granting permission to appear. It must be noted here that in the further affidavit dated 11th November 1992 it is stated that grant of leave does not amount to grant of permission under Rule 72 of the Secondary School Code. Rule 72 reads thus:

> "If the employee appears for the examination without permission from the management, it is breach of discipline and suitable action can be taken by the management against him. But if he is continued in service after taking such action he will be eligible for pay according to qualifications, provided there is a vacancy of a trained graduate teacher."

The said Rule does not disentitle a teacher from getting the benefits of B.Ed.degree on the ground that the teacher appeared for B.Ed.examination without prior permission of the management. Rule 72 provides that appearing for examination without permission is a breach of discipline. Therefore, even assuming that the Petitioner had not obtained prior permission of the management for appearing for B.Ed. examination, that is

no ground to deny pay-scale of graduate trained teacher to the Petitioner.

9. In paragraph 8 of the affidavit-in-reply filed by the Education Inspector, it is admitted that after the Petitioner passed B.Ed.Examination in October 1983, the Head Master of the Respondent No.1-School submitted a proposal to the Education Inspector i.e. Respondent No.3 recommending grant of graduate pay-scale to the Petitioner. In fact, there is a resolution passed on 20th September 1986 by the management for giving trained graduate pay scale to the petitioner from the year 1983. Considering these peculiar facts of the case, we are of the view that the Petitioner should have been granted pay scale of graduate teacher from October 1983 i.e. from the date of passing of B.Ed. examination. Coming back to the other contention raised by the Petitioner regarding the grant of pay scale to the Petitioner from the year 1979 which is applicable to a teacher possessing qualification of B.A. and STC, it is not in dispute that the Petitioner does not possess STC and had obtained TCH certificate from Mysore University. The impugned order dated 3rd October 1992 records and is not disputed by the Petitioner that TCH of Mysore University was granted equivalence to the STC in Maharashtra with effect from 7th January 1990. Thus the said submission of the Petitioner has no force.

10. It is contended by the learned Counsel for the Respondents Nos.1 and 2 that in the year 1983, the Respondent No.1 was a fully aided school. We have held that the Petitioner is entitled to the pay scale of a trained graduate teacher from the month of October 1983. In view of this finding, arrears on account of difference in pay and consequential benefits will have to be granted to the Petitioner. If the said school was fully aided in the year 1983, it is open for the Respondents Nos.1 and 2 to claim necessary grant from the State Government for payment of requisite amounts to the Petitioner in accordance with the Rules.

11. The petition must partly succeed and we pass the following order:

(i) The impugned order dated 3rd October 1992 is quashed and set aside in so far as it holds that the Petitioner is entitled to pay scale of graduate trained teacher only from 1986.

(ii) We direct that the Petitioner is entitled to the pay scale of a trained graduate teacher from the month of October 1983.

(iii) The Petitioner is entitled to the

difference in pay scale and all other consequential benefits. The arrears of pay on account of difference and other consequential benefits shall be released by the Respondent No.2 in favour of the Petitioner within a period of six months from today.

(iv) Rest of the prayers of the Petitioner are rejected.

(v) It will be open for the Respondents Nos.1 and 2 to apply for or to submit proposal/pay bill for release of grant for making payment to the Petitioner in terms of this order and if such application is made, the concerned authorities will consider the same in accordance with law.

(vi) There will be no order as to costs.

(vii) Rule is made partly absolute in above terms.

(viii) Parties to act on an authenticated copy of this order.

(Smt.Ranjana Desai, J.)

(Abhay S.Oka, J.)